

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**HB 1041 – SB 1260**

May 8, 2017

**SUMMARY OF ORIGINAL BILL:** Creates a new sentencing enhancement factor if the defendant was illegally present in the United States at the time of the commission of the felony and had previously been deported from the United States for committing a criminal offense.

**FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Expenditures – \$505,500/Incarceration\*

**SUMMARY OF AMENDMENT (006481):** Deletes and rewrites the proposed legislation to remove the requirement that the defendant must have been previously deported from the United States.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- The proposed legislation creates a new sentencing enhancement factor. Tennessee Code Annotated § 40-35-114 gives a judge the discretion to enhance sentences. Though broad, the enhancement factor will only impact a few cases.
- The factor could apply to any felony committed by someone illegally present in the United States at the time the felony was committed.
- Fiscal Review Committee staff cannot reasonably determine which felonies would be enhanced. However, it is reasonable to assume that one class E felony offense, one class D felony offense, one class C felony offense, one class B felony offense, and one class A felony offense will be enhanced each year.
- The average time served for felony offenses is as follows:
  - Class A felony – 16.79 years;
  - Class B felony – 6.32 years;
  - Class C felony – 3.51 years;
  - Class D felony – 2.23 years; and
  - Class E felony – 1.40 years.

- All of these average time served periods fall within the release eligibility dates for Range II sentencing except for the average time served for class A felony, but this is due to many class A felonies being required to serve no less than 85 percent of the sentence received under Tenn. Code Ann. § 40-35-501(i)(2).
- It is assumed that the average offender is sentenced to the lowest period of confinement within Range II and that each affected offender will be sentenced to the highest period of confinement within Range II.
- Currently, the average time percentage of the sentence received for each class is:
  - Class A felony – 66.36 percent (16.59 average time served / 25 years, the lowest sentence in Range II);
  - Class B felony – 53.67 percent (6.32 average time served / 12 years, the lowest sentence in Range II);
  - Class C felony – 58.5 percent (3.51 average time served / 6 years, the lowest sentence in Range II);
  - Class D felony – 55.75 percent (2.23 average time served / 4 years, the lowest sentence in Range II); and
  - Class E felony – 70 percent (1.40 average time served / 2 years, the lowest sentence in Range II).
- It is assumed that the offenders will serve a similar percentage of the sentences enhanced under the proposed legislation.
- It is assumed that the proposed legislation will increase the average time served for the enhanced offenders as follows:
  - Class A felony – 26.54 years (40 years, highest sentence in Range II x 0.6636);
  - Class B felony – 10.53 years (20 years, highest sentence in Range II x 0.5367);
  - Class C felony – 5.85 years (10 years, highest sentence in Range II x 0.585);
  - Class D felony – 4.46 years (8 years, highest sentence in Range II x 0.5575); and
  - Class E felony – 2.8 years (4 years, highest sentence in Range II x 0.7).
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2017 is \$68.75.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount applies, but due to the low number of admissions impacted by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- The proposed legislation will result in the class A offender serving an additional 9.95 years (26.54 – 16.59), or 3,634.24 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 9.95 years (3,634.24 days) for a total of \$249,854 (\$68.75 x 3,634.24 days).
- The proposed legislation will result in the class B offender serving an additional 4.21 years (10.53 – 6.32), or 1,537.7 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 4.21 years (1,537.7 days) for a total of \$105,717 (\$68.75 x 1,537.7 days).

- The proposed legislation will result in the class C offender serving an additional 2.34 years (5.85 – 3.51), or 854.69 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 2.34 years (854.69 days) for a total of \$58,760 (\$68.75 x 854.69 days).
- The proposed legislation will result in the class D offender serving an additional 2.23 years (4.46 – 2.23), or 814.51 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 2.23 years (814.51 days) for a total of \$55,998 (\$68.75 x 814.51 days).
- The proposed legislation will result in the class E offender serving an additional 1.4 years (2.8 – 1.4), or 511.35 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 1.4 years (511.35 days) for a total of \$35,155 (\$68.75 x 511.35 days).
- The total increase in incarceration costs is \$505,484 (\$249,854 + \$105,717 + \$58,760 + \$55,998 + \$35,155).
- The proposed legislation will not create any new cases. It is assumed that the courts, district attorneys, and public defenders can handle any impact within their existing resources. The Administrative Office of the Courts, District Attorneys General Conference, and the District Public Defenders Conference confirms that any impact can be handled within their existing resources.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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